

Dominick's Finer Foods, Inc., and Donna's Distribution, a Subsidiary of Dominick's Finer Foods, Inc.; Certified Grocers Midwest, Inc.; and Mavo Leasing and Produce, Fresh & Frozen Fruits & Vegetables, Fish, Butter, Eggs, Cheese, Poultry, Florists, Nursery, Landscape & Allied Employees, Drivers, Chauffeurs, Warehousemen & Helpers Union Local 703, International Brotherhood of Teamsters, AFL-CIO¹ and Produce, Fresh & Frozen Fruits & Vegetables, Fish, Butter, Eggs, Cheese, Poultry, Florists, Nursery, Landscape & Allied Employees, Drivers, Chauffeurs, Warehousemen & Helpers Union, Local 703, a Division of Truck Drivers, Chauffeurs, Warehousemen and Helpers Union Local 707, affiliated with the National Production Workers Union, Party in Interest

Produce, Fresh & Frozen Fruits & Vegetables, Fish, Butter, Eggs, Cheese, Poultry, Florists, Nursery, Landscape & Allied Employees, Drivers, Chauffeurs, Warehousemen & Helpers Union, Local 703, International Brotherhood of Teamsters, AFL-CIO and National Production Workers Union

Produce, Fresh & Frozen Fruits & Vegetables, Fish, Butter, Eggs, Cheese, Poultry, Florists, Nursery, Landscape & Allied Employees, Drivers, Chauffeurs, Warehousemen & Helpers Union, Local 703, a Division of Truck Drivers, Chauffeurs, Warehousemen and Helpers Union Local 707, affiliated with the National Production Workers Union and Produce, Fresh & Frozen Fruits & Vegetables, Fish, Butter, Eggs, Cheese, Poultry, Florists, Nursery, Landscape & Allied Employees, Drivers, Chauffeurs, Warehousemen & Helpers Union Local 703, International Brotherhood of Teamsters, AFL-CIO. Cases 13-CA-29771, 13-CA-29772, 13-CA-29973, 13-CA-30015, 13-CB-13208, and 13-CB-13326

September 23, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

On February 5, 1992, Administrative Law Judge Walter H. Maloney issued the attached decision. Counsel for Respondent Local 707 filed exceptions and a supporting brief, and counsel for the General Counsel and the Charging Party each filed answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

¹ The caption reflects the new official name of the International Union.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to adopt the judge's rulings, findings,² and conclusions, and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge, and orders that Respondents Dominick's Finer Foods, Inc., Donna's Distribution, Certified Grocers Midwest, Inc., and Mavo Leasing, all of Chicago, Illinois, their officers, agents, successors, and assigns; and Respondent Truck Drivers, Chauffeurs, Warehousemen and Helpers Union, Local 707, affiliated with National Production Workers Union, Chicago, Illinois, or Produce, Fresh & Frozen Fruits & Vegetables, Fish, Butter, Eggs, Cheese, Poultry, Florists, Nursery, Landscape & Allied Employees, Drivers, Chauffeurs, Warehousemen & Helpers Union, Local 703, a Division of Truck Drivers, Chauffeurs, Warehousemen and Helpers Union Local 707, affiliated with the National Production Workers Union, Chicago, Illinois, their officers, agents, and representatives, shall take the action set forth in the Order.

² Local 707 NPWU contends that 8(a)(5) allegations in the original charges in Cases 13-CA-29771 and 13-CA-29772 were in effect withdrawn when those charges were amended to allege 8(a)(2) violations thereby providing no support for the judge's 8(a)(5) findings in those cases. The record does not support these factual assertions by Local 707 NPWU because the text of each of these amended charges specifically alleges a refusal to bargain with the Charging Party. However, even if these assertions were accurate, we would nevertheless affirm the judge's 8(a)(5) findings on the grounds that they arise from the same factual situation and involve the same legal theory underlying the timely filed 8(a)(2) charge. *Whitewood Oriental Maintenance Co.*, 292 NLRB 1159, 1169-1170 (1989), enfd. sub nom. *Texas World Service Co. v. NLRB*, 928 F.2d 1426, 1436-1437 (5th Cir. 1991).

We correct the following inadvertent errors by the judge; they do not affect our decision. In sec. I.B, par. 14, Local 707's name in the "Petition Authorization" should read, "Truck Drivers, Chauffeurs, Warehousemen and Helpers Union, Local 707, an affiliate of the National Production Workers Union"; in secs. I.B, par. 4 and I.C, par. 3, the period from January 1, 1987, to March 31, 1990, is incorrectly calculated to be "33" (rather than "39") months; in sec. I.C, par. 9, the 8(a)(1) and (3) violation for giving effect to the union-security clause in favor of Local 707 NPWU is inadvertently stated as 8(a)(1) and (2); in sec. I.B, par. 10, and in fn. 25, Local 703 is incorrectly referred to as Local 707; and Conclusion of Law 8 should read "... said union [rather than employees] did not represent an uncoerced majority."

Sheryl Sternberg, Esq., Paul Hitterman, Esq., Jeffrey Wolf, Esq., and Diane Reynolds Esq., for the General Counsel.
P. Neill Petronella, Esq., John J. Murphy, Esq., and David Miller, Esq., of Chicago, Illinois, for Respondents Dominick's Finer Foods, Inc., and Donna's Distribution.
Shayle P. Fox, Esq., Joshua Holleb, Esq., Paul Olsen, Esq., of Chicago, Illinois, for the Respondent Certified Grocers Midwest, Inc.

Anthony S. Graefe, Esq., Brian Steinbach, and Eugene A. Boyle, Esq., of Chicago, Illinois, for the Respondent Mavo Leasing.

William A. Widmer III, Esq., and Adrienne E. Hampo, Esq., of Chicago, Illinois, for Teamsters Local 703.

Cora Vaughn, Esq., of Gary, Indiana, and *Jesse Outlaw, Esq.,* of Chicago, Illinois, for Truck Drivers Local 707, NPWU.

DECISION

FINDINGS OF FACT

I. STATEMENT OF THE CASE

WALTER H. MALONEY, Administrative Law Judge. This case¹ came on for hearing before me in Chicago, Illinois, upon a consolidated unfair labor practice complaint,² issued by the Regional Director of Region 13 alleging that the Re-

¹Originally the lead case in this consolidated proceeding was captioned Market Services Association, its Members and Associate Members, Case 13-CA-29790. Following the close of the hearing Respondent Market Services Association, a trade association which bargains on behalf of about 100 members, entered into an informal settlement agreement with Charging Party Teamsters Local 703 which disposed of all issues in the consolidated complaint which pertained to that Respondent. On December 31, 1991, I severed the Market Services Association case from the remainder of the cases herein and approved the settlement agreement, notwithstanding the vigorous objection of Truck Drivers Local 707, NPWU. The latter moved to reconsider and to set aside the order approving the settlement. That motion is denied and the original order is hereby affirmed. Accordingly, no findings or conclusions will be made herein pertaining to Market Services Association or its members, although occasional reference to them will be made in the course of the discussion which follows.

²The principal docket entries in this case are as follows:

Charge filed by Teamsters Local 703 (sometimes referred to as Local 703 IBT) against Dominick's Finer Foods, Inc. (Dominick's) in Case 13-CA-29771 on October 24, 1990, amended on April 9, 1991, and again on June 24, 1991; charge filed by Local 703 IBT, against Certified Grocers Midwest, Inc. (Certified) in Case 13-CA-29972 on October 18, 1990, amended April 9, 1991, and amended again on June 24, 1991; charge filed by Local 703 IBT against Mavo Leasing (Mavo) in Case 13-CA-29973 on January 8, 1991, amended on April 11, 1991, and amended again on June 24, 1991; charge filed by Local 703 IBT against Donna's Distribution (Donna's) in Case 13-CA-30015, on January 30, 1991, amended on April 9, 1991, and again on June 24, 1991; charge filed by Teamsters Local 703 against Truck Drivers Local 707, NPWU, on March 25, 1991, and amended on September 25, 1991; original consolidated complaint issued against the aforementioned Employer Respondents and Market Services Association by the Regional Director for Region 13, on March 29, 1991; Respondents' answers filed on April 12, 1991; further consolidated complaint including complaint against Respondent Truck Drivers Local 707, NPWU, issued by the Director, Region 13, on July 3, 1991; amended consolidated complaints issued against all Respondents on September 13, 1991; Respondent Employers filed answers on September 25, 1991, and September 27, 1991; charge filed by National Production Workers Union against Local 703 IBT on December 10, 1991; complaint issued against Local 703 IBT by the Director, Region 13, on April 25, 1991; Respondent Local 703 IBT answer filed on May 6, 1991; hearings held in Chicago, Illinois, on September 30, 1991, and October 1-4, 15-18, 21, 22, 29, and 30, 1991; briefs filed by all parties with me on or before December 31, 1991.

spondent Employers³ herein violated Section 8(a)(1), (2), (3), and (5) of the Act, that Respondent Teamsters Local 703 violated Section 8(b)(1)(A) of the Act, and that Respondent Truck Drivers Local 707, NPWU, violated Section 8(b)(1)(A) and (2) of the Act.

This case arises in the wake of an effort of the former executive board of Local 703 IBT to transfer the membership and the assets of that labor organization to Truck Drivers Local 707 NPWU. The allegations against the Respondent Employers assert that each of them unlawfully recognized Truck Drivers Local 707 NPWU and refused to bargain in good faith with Local 703 IBT, the incumbent labor organization with whom each employer was contractually bound. An element of the unlawful recognition and assistance is that each Employer violated the Act by checking off dues from its employees and remitting them to Truck Drivers Local 707 NPWU. The consolidated complaint alleges that Truck Drivers Local 707 NPWU violated the Act by accepting recognition it was not entitled to and receiving and accepting dues which the respective employers were not entitled to check off and remit. The allegation against Local 703 IBT is that, following the transfer of membership and contractual rights to the rival union, it threatened to refrain from processing fringe benefit claims unless the claimants were Local 703 IBT members. The Employers and Truck Drivers Local 707 NPWU contend that the withdrawal of recognition from Local 703 IBT and the recognition granted to its rival were accomplished in good faith upon the presentation of valid petition signatures and checkoff authorization cards signed by a majority of their employees in the respective units involved in this case. In the case of Respondent Certified, it requests to be excused from any liability for a violation of the Act, claiming that it was "in the middle" of a fight between two labor organizations and that its action in allowing both Unions access to its premises and granting recognition to each for the processing of grievances was a legally acceptable accommodation to the circumstances in which it was placed. Respondent Local 703 IBT denies the coercive effect of any documents sent to its members informing them of the proper procedure to use in making claims from benefit funds. Upon these contentions, the issues herein were joined.⁴

II. THE UNFAIR LABOR PRACTICES ALLEGED

Local 703 IBT is a large and active labor organization in the Chicago metropolitan area which represents warehousemen and drivers who are employed in a variety of different industries, principally grocery wholesalers and retailers, nurseries, landscapers, and florists. It also represents public sector employees working for the Chicago Park District. Until the events recited in this decision arose, it had approximately 2500 members and appointed trustees to three jointly administered employee fringe benefit funds: a pension fund, a health and welfare fund, and a so-called severance and retire-

³All parties admit, and I find, that each Respondent Employer is engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act and that each Respondent Union is a labor organization within the meaning of Sec. 2(5) of the Act.

⁴Errors in the transcript have been noted and corrected. In a posthearing motion, the General Counsel requested the inclusion in the record of Respondent Truck Drivers Local 707 NPWU's original answer to the consolidated complaint and its supplementary answer. The motion is granted.

ment fund. Its long-time president was Dominic Senese. Its secretary-treasurer, the principal operating head of the Union, was Dominic's son, Lucien Senese. Local 703 IBT was, and remains, chartered by the International Brotherhood of Teamsters and is a member of Teamsters Joint Council 25, an organization composed of all Teamsters locals in the Chicago metropolitan area. Its headquarters is located at 300 South Ashland Avenue on Chicago's near west side in a building known as "Teamster City," which houses the Joint Council and other Teamster locals. The offices of the Local 703 IBT fringe benefit trust funds are also located in this building. Contracts with the various "barns" where Local 703 IBT members are employed are individual contracts covering individual units, but many are similar in kind and several in the grocery industry have common expiration dates and common wage reopener dates. The Local 703 IBT trust funds provide commonly administered fringe benefits for all members regardless of where they are employed.

Respondent Dominick's operates a large retail grocery chain in the Chicago metropolitan area which is served by two large warehouses located in suburban North Lake. Dominick's also owns and operates a subsidiary division known as Donna's Distribution, which has a warehouse and distribution center known as Donna's Repack on 42d Place in southwest Chicago. For many years the warehousemen and foodhandlers employed at both locations have been covered by collective-bargaining agreements with Local 703 IBT. About 400 warehousemen are employed in Dominick's suburban warehouses and about 100 are employed in the separate bargaining unit at Donna's.⁵ Deliveries to Dominick's retail stores are made from both locations by employees of Respondent Mavo Leasing in trucks owned by Mavo Leasing.⁶ Mavo is owned and operated by two individuals who were formerly employees of Dominick's. For the past 5-1/2 years they have operated their own business as a labor contractor for Dominick's and Donna's. Dominick's and Donna's are their only customer. Mavo employs about 155 to 160 drivers at the Dominick's warehouse who report for work at the warehouse and are dispatched by Dominick's dispatchers. They employ about 15 to 17 drivers who are domiciled at Donna's Repack who are dispatched from that location by Mavo employees. Mavo drivers at both locations were covered by a single contract with Local 703 IBT at the time the events herein began to unfold.

Certified operates a large grocery warehouse at Hodgkins, Illinois, just southwest of Chicago. From that location it supplies retail stores in Illinois and several surrounding States. Certified has contracts with more than one Teamsters local at its Hodgkins warehouse. At that location it employs about 180 warehousemen and drivers in a bargaining unit which, for many years, had been represented exclusively by Local 703 IBT until the controversy in this case arose. Dominick's, Donna's, and Mavo each had separate 33-month contracts with Local 703 IBT commencing January 1, 1987, and terminating on March 31, 1990. In July 1988, following negotia-

tions with the former leadership of Local 703 IBT, each of these contracts was extended to expire on March 31, 1996, with annual wage reopeners on April 1 of each year. Employees covered by each of these agreements were guaranteed wage increases each April 1 in amounts equal to the increases granted under the Teamsters' National Master Freight Agreement, plus any other amounts which might be negotiated on an individual basis. Certified had an agreement covering its Local 703 IBT bargaining unit for a 3-year period beginning April 1, 1988, and ending March 31, 1991. At or about the same time the other contracts referred to above were renegotiated and extended, Certified entered into an agreement with the former leadership of Local 703 IBT extending its current contract to the same expiration date, namely March 31, 1996, and providing also for annual wage reopeners on April 1 of each intervening year with similar guaranteed increases tied to the National Master Freight Agreement.

In June 1988, just before the above-referenced contracts were amended and extended, the U.S. Department of Justice brought suit against the International Brotherhood of Teamsters, all of its International officers, and several other officials under the provisions of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1964, seeking a host of remedies, including the direct election of Teamsters International officers. The Respondent also sought the removal from office of various individuals throughout the entire Teamsters organization whom, it alleged, were closely tied to elements of organized crime, particularly La Cosa Nostra. Among the many individual defendants named in the suit were International Vice President and Joint Council 25 President Daniel C. Liguoritis and Local 703 IBT President Dominic Senese. The suit was docketed in the United States District Court for the Southern District of New York in New York City. On March 14, 1989, U.S. District Judge David N. Edelman approved and entered a consent decree which provided, among other things, for the appointment of an investigations officer and an independent administrator to oversee the removal of criminal elements from the entire Teamsters organization. It is the function of the investigations officer to obtain evidence of criminal connections and official wrongdoing on the part of Teamsters officials and to seek their removal in actions brought before the independent administrator, former U.S. District Judge Frederick B. Lacey. It is Judge Lacey's function to adjudicate allegations brought to his attention by the investigation officer and to direct appropriate action, subject to review by the district judge. See generally *U.S. v. Teamsters*, 708 F.Supp. 1388 (S.D.N.Y. 1989).

In the course of the activities of these officials of the district court, an investigation of IBT 703 President Dominic Senese was undertaken concerning his possible underworld connections. After a hearing before the independent administrator, D. Senese was directed to resign as president of Local 703 IBT because of his known association with two members of La Cosa Nostra. See *U.S. v. Teamsters*, 745 F.Supp. 908 and 753 F.Supp. 1181, affd. 941 F.2d 1292 (2d Cir. 1991). Shortly after the district court decision in August 1990, upholding the determination of the independent administrator, D. Senese resigned, effective August 30, 1990. His position as president was immediately filled by Leonard A. Joseph II, a trustee and long-time member of the Union's ex-

⁵ Each unit is covered by a separate contract. The record contains frequent reference to the fact that Donna's employees do not receive any benefits under the Chicago Area I.B. of T. Pension Plan. However, they are covered by the other two Local 703 fringe benefit plans.

⁶ Donna's owns a meatpacking plant and uses Mavo drivers at another location. However, they are not involved in this controversy.

ecutive board. Joseph's position as trustee of the Local was immediately filled by Joseph R. "Joey" Senese, a nephew of the deposed president and a cousin of Lucien Senese, the secretary-treasurer.

While these threats to the control of Local 703 IBT by the Senese family were underway in Federal court, another threat in the form of internal political opposition developed which met with considerably less success. Throughout the hearing in this case, the members of the Senese faction, now associated with Respondent Truck Drivers Local 707 NPWU, testified repeatedly and at length about internal union problems within the body of IBT Local 703 which they attributed to members of other Teamsters locals, particularly Locals 705 and 738. Local 705 is a sister local controlled by Liguoritis, who is now the trustee of Local 703 IBT.⁷ In November 1989, two opposing slates were nominated for union office at a raucous convention attended by nearly 300 Local 703 IBT members. One slate was led by Lucien Senese and the other by William J. Raimondi.⁸ The Senese slate defeated the Raimondi slate at an election held on December 27, 1989. It was also successful in surviving a challenge to that election filed by Raimondi with the U.S. Department of Labor.

On September 6, 1990, a week after his father had resigned, Lucien Senese met with what several witnesses referred to as an "unfortunate accident." His car blew up on a public street in Chicago and L. Senese was seriously injured. He is still recuperating from the event. As a result of this bombing, Joseph was left in control of the Local, along with the other members of the executive board.⁹ Immediately thereafter, Joseph began steps to bring IBT Local 703 into the fold of Truck Drivers Local 707 NPWU, whose offices at 1655 West Jackson Boulevard were adjacent to the Local 703 IBT office at Teamsters City.

The National Production Workers Union (NPWU) is an unaffiliated group of four unions. Its overall president is Joseph V. Senese, son of Dominic and brother of Lucien. Its vice president, Frank Strube, was a former employee of Local 703 IBT and an acquaintance of Joseph's. Through

Strube Joseph was introduced to Philip Cappitelli, president of Truck Drivers Local 707 NPWU.¹⁰ Cappitelli and Joseph had several meetings in the second and third week of September. Joseph broached the subject of affiliation by Local 703 IBT with Truck Drivers Local 707 NPWU. Cappitelli was receptive to the idea and suggested that a division of Truck Drivers Local 707 might be set up for any new members coming over from the Teamsters affiliate. They did not discuss union dues, servicing of existing contracts, salaries for new business agents, or any related matters pertaining to contract administration. Joseph reported these meetings to informal gatherings of the Local 703 IBT executive board, but no discussions of such matters ever took place at a regular membership meeting of the Local.¹¹

While Joseph was looking about for another union with which to affiliate, he, Attorney Cora Vaughn, and Local 703 IBT Trust Fund Actuary Alex Selwood were investigating the transfer of Local 707 IBT trust funds to other trustees. At that time, the provisions of the three trust fund instruments restricted payments to members of Local 707 IBT and their dependents. The health and welfare fund had assets of approximately \$18 million and made monthly benefit payments ranging from \$600,000 to more than \$800,000 to members and their families for medical and hospital expenses. The severance and retirement fund has only a vaguely defined purpose of providing "severance, retirement, and other benefits" for members. It has permitted withdrawals for such expenses as college tuitions and financing home purchases. The pension fund provides pensions for Local 703 IBT members under various options pertaining to age and length of service with a Local 703 IBT contributing em-

¹⁰ Joseph said that he recommended to executive board members that the Local withdraw from the Teamsters and affiliate with another labor organization. However, he admits that no efforts were made to contact any union other than Truck Drivers Local 707 NPWU.

¹¹ NPWU is composed of four locals, all of which bear the name of Local 707. There is Local 707 in Cleveland, Professional Workers Local 707, Production Workers Local 707, and the Respondent in this case, Truck Drivers 707. Most of the members of Respondent Truck Drivers Local 707 are located in and around Chicago. Some of its officials testified that the Respondent Union has about 2500 members, but this figure is highly suspect. Its labor department LM-3 form for 1989, which was placed in evidence, shows that Truck Drivers Local 707 NPWU had assets in that year that barely exceeded \$100,000 and liabilities that nearly offset that figure. More to the point, the form also disclosed that, in 1989, it took in a total of \$4306 in dues, an amount which any 10 members of Local 703 IBT would contribute in the course of a year. Monthly union dues for Local 703 IBT are \$34. Monthly dues for Truck Drivers Local 707 NPWU were reported on the LM-3 form as ranging from \$17.50 to \$25 a month. Respondent Union assets that it was not properly charged since the initial charge in Case 13-CB-13326 was filed against "Local 707" of the NPWU, a Cleveland local, and not "Truck Drivers Local 707." The charge designated the address of the Charged Party as 1655 West Jackson Boulevard, the address of Truck Drivers Local 707. The affidavit of service shows that it was served upon the Respondent in this case at that address, not in Cleveland. In light of the devious and misleading nomenclature attached to the NPWU locals, the identification of the Respondent herein was made with sufficient particularity to designate it rather than an Ohio local as the entity whose conduct would be under investigation, so the contention of the Respondent that it was never properly charged or served must be disallowed.

⁷ According to an article in the business section of the *Chicago Tribune* of October 5, 1990, in evidence in this case, the source of political opposition to the Senese faction of "mob dominated" Local 703 IBT was not other Teamsters locals but rival factions in the Chicago underworld.

⁸ According to the uncontradicted testimony of Joseph, the Senese slate was nominated at a union meeting in November at which a rival slate was put forward pitting Raimondi against Lucien Senese for the principal post of secretary-treasurer. Raimondi then got up at the meeting and purported to withdraw his name from contention. He walked over to L. Senese, held out his arm as if to shake hands, and kicked L. Senese in the groin. Raimondi persisted in his candidacy but, as already noted, without success. During the pendency of his protest to the Labor Department, Raimondi prevailed upon member Ed Gadd to offer his services to the FBI as a paid informant in an effort to provide the Government with information concerning alleged criminal activity on the part of the Seneses. Gadd ceased his activity on behalf of the FBI after a few months, apparently without providing the Bureau with any information which it felt was of value.

⁹ The members of the executive board of the Local who were members of the Senese faction and who assisted Joseph in carrying out the plan of action which is the substance of this litigation were: Vice President Donald Pennington, Recording Secretary Anthony J. Monaco, and Trustees Vincent Gregosanc, Joseph R. "Joey" Senese, and Anthony Martinez.

ployer. During the ensuing efforts to bring about a transfer of membership from Local 703 IBT to Truck Drivers Local 707 NPWU, the greatest area of concern and the source of most inquiries by rank-and-file members to Joseph and others was what would become of their pension rights. Joseph testified, without contradiction, that the aggregate of the assets in the three fringe benefit funds amounted to between \$110 and \$120 million.

Upon becoming president of Local 703 IBT, Joseph designated himself as one of the two union-appointed trustees who manage each of the three funds. He was accepted as such at the regular monthly meeting of fund trustees that took place on September 12. However, 2 days earlier, he had the first of several conferences with Jerry Marsh and Frank Vanderploeg, attorneys in the firm of Harris & Sutter which specializes in trust fund management. He was seeking legal advice concerning treatment of welfare and pension funds, and treatment of pension plans when union affiliations change. (At that time, the law firm of Asher, Gittler, Greenfield, Cohen, & D'Alba, Ltd. were the attorneys for the three funds.) The firm of Harris & Sutter billed Teamsters Local 703 41 hours for work performed in the month of September, most of which was devoted to giving legal advice and drawing up documents to effectuate the merger or the transfer of the three Local 703 IBT benefit trusts to joint management-union control by Truck Drivers Local 707 NPWU and employers having contracts with that labor organization.¹²

On September 21 and 25, Joseph, Joey Senese, Monaco, and employer trustees of the Chicago Area I. B. of T. Health & Welfare Trust Funds executed a document providing for the merger of these funds. Cappitelli signed on behalf of the NPWU local.¹³ The instrument merged the IBT trust fund with the NPWU trust fund and provided that "The Union for purposes of the Trust Fund shall be the Union as defined in the NPWU Trusts." An amendment executed the same day by Joseph, Monaco, and the two employee trustees of the IBT health and welfare fund, provided further that "if either the Union or any single Other Labor Organization represents more than two-thirds of the employees for whom contributions are being made to the Fund at the time any vacancy occurs in the office of Employee Trustee for any reason, the Union or such Other Labor Organization shall designate the Employee Trustees." In short, Joseph and Monaco would continue to be employee trustees and, if a vacancy occurred, Truck Drivers Local 707 NPWU would appoint their replacements if it represented more than two-thirds of the employees covered. Similar amendments relative to filling of employee trustee vacancies were executed at that time covering both the IBT pension trust fund and the IBT severance and retirement trust fund. On September 30, the trustees executed a document authorizing the transfer of the trust fund office

from "Teamsters City" to the Truck Drivers Local 707 NPWU office around the corner. However, in light of ensuing events, the transfer never actually took place.

Having secured control of the trust funds, Joseph and his colleagues on the Local 703 IBT executive board then approached various employers with whom Local 703 IBT had collective-bargaining agreements with a proposal for a two-step transfer of recognition and contract rights from Local 703 IBT to Truck Drivers Local 707 NPWU. On September 19, Joseph, still president of Local 703 IBT, met with Harold Greenburg, president of Certified, and Ed Bradley, Certified's vice president of distribution, and requested that Certified execute a "Memorandum of Agreement" recognizing both Local 703 IBT and Truck Drivers Local 707 NPWU as the joint exclusive bargaining representative of those Certified employees who were then working under the Local 703 IBT contract. On the same day, Joseph presented similar proposals covering the Dominick's and Donna's bargaining units to Thomas Roti, Dominick's general counsel. Roti forwarded the documents to James Lamonia, Dominick's vice president-labor relations.¹⁴ On September 27, 1990, Local 703 Vice President Pennington, a former employee of Mavo and one-time Mavo shop steward, visited Michael F. Mavigliano Jr., Mavo's president, and presented Mavigliano with a similar proposal. The proposed memorandum of agreement in each instance read, in pertinent part:

The Employer [named above] and Local 703 are signatory to a collective bargaining agreement ("agreement") which covers the terms and working conditions of employees employed by the Employer ("unit employees"). Pursuant to authorization given to Local 707 by a majority of those unit employees, the Employer and Local 703 hereby recognize Local 707 as the joint exclusive bargaining agent of the unit employees. The Employer, Local 703, and Local 707 expressly agree that Local 703 and Local 707 may represent those employees jointly or separately and that, in the event one union disclaims interest in representing those employees, the other union shall continue to act as and be recognized as the sole exclusive collective bargaining agent of those employees.

It is hereby understood and agreed that all terms and conditions of the agreement shall remain in effect, except the recognition and union security clauses, which shall be deemed to be amended in accordance with this agreement.

There were places on each document for the signatures of Local 703 IBT and Truck Drivers Local 707 NPWU representatives, as well as Employer Representatives.

Having presented various employers requests for joint recognition with right of disclaimer to various employers, the

¹² The minutes of trustee meetings of Local 703 IBT trust funds contain no reference to these activities nor could any of the documents which purported to transfer control over these funds be found in the files of either Local 703 IBT or the trustees of the funds.

¹³ There is no evidence in the record whether, and to what extent, the National Production Workers Union Insurance Trust Fund is actually funded, or to whom benefits may be provided. The merger agreement recites that the NPWU fund provides health and welfare benefits for certain employees of employers covered by "collective bargaining agreements with the Union and other employee organizations (as defined in the NPWU fund)."

¹⁴ During this same time, a similar proposal was being made to officials of Market Services Association covering that organization and its member employers who are the subject of the settlement agreement referred to above in fn. 1. Unsuccessful efforts were made by Local 703 IBT officials to enlist the cooperation of small employers in the florist, landscaping, and nursery businesses that had contracts with Local 703 IBT. None of the latter would agree to joint recognition with right of disclaimer, so they have never been a part of this litigation before the Board.

members of the Local 703 IBT's executive board set about collecting signatures from union members at their places of employment on petitions to support that request. Most of this effort took place between September 24 and 27. The petitions were printed on individual 8-1/2-by-11 sheets of paper, entitled "Authorization Petition," and read:

The undersigned employees employed by [Name of Company] hereby designate the PRODUCE, FRESH AND FROZEN FRUITS AND VEGETABLES, FISH, BUTTER, EGGS, CHEESE, POULTRY, FLORIST, NURSERY, LANDSCAPE AND ALLIED EMPLOYEES, DRIVERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, CHICAGO AND VICINITY, ILLINOIS, LOCAL 703, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL 707, an AFFILIATE OF THE NATIONAL PRODUCTION WORKERS UNION, to act as our exclusive collective bargaining representative, either jointly or separately.

Each petition sheet had a place for the printed name and the signature of the petitioner, along with the date, and provided spaces for 14 signatures.

With only a handful of exceptions, employee signatures were collected during the working hours of employee signatories. Typically, the business agent or officer who serviced the company in question during routine contract administration visited the company's premises and, with the assistance of locally employed stewards who were normally on the clock, solicited signatures from bargaining unit members. In some instances, employees were summoned to offices located on company property that were used by Local 703 IBT officers and stewards for contract administration. They were presented the petition form in the presence of either the business representative, the stewards, or both. In some instances, stewards and others went through the warehouses and solicited signatures from employees while they were working on the job. Completed forms were then turned into business agents and brought to the Local 703 IBT office. There is no suggestion in the record that the signatures which were gathered on the petitions were not authentic, meaning simply that the signatories were not challenged at the hearing on the basis that they had not been affixed to the petition sheets by the individuals whose signatures they purported to be. On the other hand, there is no evidence that any of the Employer Respondents, when presented with batches of petition sheets, made any effort to verify the signatures proffered to them, either by comparing them with known signatures on file or by any other means.

At Certified, Joseph personally solicited signatures with the assistance of Pennington and stewards Phil Lascola and John Reedy at the Certified warehouse in Hodgkins. In the course of 2 days, they collected 108 signatures from the approximately 160 drivers and warehousemen who worked in the Local 703 IBT unit. Before beginning this effort at Certified, Joseph met with the stewards on the deli dock, explained what he was doing, and told them that the same activity was being undertaken at Dominick's. Reedy asked Joseph why they were circulating petitions. Joseph replied that they were trying to "further their jurisdiction" and warned

that the Local might have to leave the Teamsters if either the government or the International made any move to take it over. They told Reedy that the International had sold out the Teamsters by signing the consent decree in New York and also told Reedy, as well as other employees who signed, that the government might try to break up the Local and distribute its members among Locals 705 and 738. He warned that a breakup of Local 703 could affect employee benefits adversely since neither Local 705 nor Local 738 provided benefits to their members which could match those provided by Local 703 IBT contracts. Joseph explained to anyone who asked that employer benefits under the various trust funds would follow the employees wherever they went in the matter of union representation.¹⁵ The petitions were stacked on a pallet of boxes and employees were asked to sign as they walked by. Joseph estimated that from 6 to 10 employees of the 108 signers actually asked questions concerning the purpose of the petitions. On September 27, Joseph presented Certified Vice President Bradley with the signed petitions. On September 28, Bradley signed the memorandum of agreement granting joint representation to both Unions. Two weeks later, Certified required Truck Drivers Local 707 NPWU to sign an indemnification agreement under which that Union agreed to reimburse Certified for any expenses or damages it might incur by virtue of its decision to sign the memorandum of agreement.

At Dominick's, the signature collection effort resulted in 302 signatures in a bargaining unit of approximately 400. Pennington initiated the effort at the Dominick's warehouse, both among Dominick's employees and Mavo drivers who were domiciled at that location. He went to the Dominick's warehouses at North Lake early in the morning of September 24 and spoke with Richard Smith, Dominick's vice president for distribution. He told Smith that he would be in the warehouse that day with shop stewards talking with Dominick's employees. He did not go into detail as to the nature of his errand. He was assisted in the signature collection effort by Dominick's stewards Kevin Karlowicz, Steven Maglaya, Tom Stiede, Dennis Donahue, and Tom Lally, as well as Mavo steward James Paetch. He told the stewards that the Union's executive board believed that something was going to happen to the Local, notably that the government or some other group was going to put the Local into trusteeship and remove its existing officers. He explained that the purpose of the petition was to prevent this from happening because, if it was tried, the Local would leave the Teamsters transfer under the umbrella of the NPWU, thereby avoiding the reach of the consent decree in the RICO case.

Karlowicz told the 90 or so employees that the purpose of the petitions was to keep Local 703 IBT's officers in their jobs. Donahue told them the purpose was to keep the government from seizing control of the Local. Maglaya said it was to help Lucien Senese, warning some employees that there was a hostile movement afoot which threatened to control the Local. Many employees who signed the petition did so without reading it, relying instead on the explanations given by their stewards, but there is no evidence that anyone was pre-

¹⁵ On September 28, Joseph posted a letter on the union bulletin board at Certified, written by VanderPloeg, which expressed the legal opinion that a change in representation would not bring about any changes in benefits under the Local 703 IBT joint trust funds.

vented from reading it. Indeed, several signers testified that they were urged by union representatives to read the petition before signing it.

Pennington also went to the Donna's warehouse on 42d Place in Chicago. Upon arriving at the warehouse, he made his presence known to the dispatcher and asked permission to speak to stewards. He and Mavo steward Paetch personally spoke with Mavo drivers who were domiciled at this location. Pennington asked Donna's stewards Steve Molinda, Tim Welch, and Tony Casta to circulate the petition among the Donna's warehousemen. They did so and collected approximately 75 signatures in a unit composed of approximately 100 employees. About 17-20 signatures were collected from Mavo drivers. Molinda told some employees that the petition was designed to protect the Local from outside forces and told some employees that, if they did not sign, the government would come in and seize their severance and retirement funds.

On September 27, Dominick's management representatives met a second time with union representatives concerning the memorandum of agreements and the petitions which had been signed by employees of Dominick's and Donna's. Joseph, Pennington, and Monaco were present for the Union; Roti and Lamonia were present for the Company. Union representatives explained that they had been at the Dominick's and Donna's premises collecting signatures, something that Roti and Lamonia were generally aware of, and they presented the petitions to company representatives. Lamonia counted the signatures but did not make any other effort to verify them. He asked union representatives what the effect joint representation would have on the current contracts and on the benefit funds. He was told that would have no effect. Joseph suggested that, if Lamonia had any questions concerning the benefit funds, he should contact Attorney VanderPloeg.¹⁶ Lamonia called his counterparts at Certified and at Mavo to tell them what had transpired at Dominick's and inquire what they were going to do about similar requests for joint representation. The following day, he executed a memorandum of agreement and forwarded it to Local 703 IBT.

On September 27, Pennington visited Mavigliano at Mavo's office and presented him with both a proposed memorandum of agreement and a set of petitions bearing 143 signatures of Mavo drivers. There are about 175 Mavo drivers domiciled at the Dominick's and Donna's warehouses. Mavigliano made a rough count of the number of signatures but took no further steps to verify them. He asked Pennington what the effect of representation would be on the existing contract and the benefit funds and was told that nothing would change. After consulting his attorney, Mavigliano signed the memorandum of agreement on September 28 and returned it to Pennington.¹⁷

¹⁶Lamonia called VanderPloeg the following day. VanderPloeg furnished him with a letter to the effect that joint representation of Dominick's and Donna's employees by two unions would have no effect on their eligibility under the benefit funds. Lamonia had these letters posted on employee bulletin boards.

¹⁷As noted in the order issued by me approving the settlement agreement involving Market Services, the same procedure was followed by the former members of the Local 703 IBT executive board in signing up employees at the South Water Street Market. They obtained 514 signatures in a bargaining unit of about the same size.

Joseph testified that he learned the following week at a meeting of Joint Council 25 that the Teamsters International was considering placing Local 703 IBT under trusteeship. According to the *Chicago Tribune* article of October 5, referred to above, General President William J. McCarthy was told by the independent administrator that he had 48 hours to place Local 703 IBT under trusteeship or the administrator would take action. Whatever stimulated the action on the part of the Teamsters International, on October 4 General President McCarthy sent a letter to Ligurotis, headed "Trusted Local Union No. 703," which read, in pertinent part:

Dear Sir and Brother:

This will advise that pursuant to the authority vested in me by Article VI, Section 5 of the International Constitution, I have appointed you as temporary Trustee over the affairs of Teamsters Local Union No. 703, effective October 4, 1990.

Enclosed is the official certificate of your appointment, together with the Notices to the membership, which should be posted immediately in the Local Union headquarters and in such other places as would best inform the membership of the imposition of Trusteeship.

In the performance of your duties, you must comply fully with the provisions of Article VI, Section 5 of the International Constitution and Titles III and V of the Landrum-Griffin Act, a copy of which is also enclosed.

Accompanying this letter was a document on the letterhead of the Teamsters International, entitled "Notice" and dated October 4, 1990. It read:

To: The Officers and Members of Local Union 703, Chicago, Illinois

Based upon credible reports, it appears that:

1. Executive Board of Local Union 703 has apparently entered into an agreement with a non-IBT Union calling itself Truck Drivers, Chauffeurs, Warehousemen and Helpers Union Local 707, an affiliate of the National Production Workers Union, and is attempting to transfer bargaining rights held by Local Union 703 to the non-IBT Local 707. Members of Local Union 703 are being required to execute authorization cards in behalf of Local 707. The Local 703 Executive Board has given every appearance of arranging for the transfer of Local Union bargaining rights and membership from Local Union 703 to Local Union 707.

2. The behavior described is in direct violation of the obligations of the officers of Local Union 703 and also in contravention of Article VII, Section 3 and Article XX of the International Constitution.

3. Local 707 of the Production Workers has been involved in signing substandard sweetheart contracts with employers which would be subject to national IBT agreements. These activities not only jeopardize the well-being of the employees of those companies but also the standards established by Teamster contracts in those industries.

Taken in the aggregate, Joseph and his colleagues obtained signatures on joint representation petitions of about 1150 employees in 5 bargaining units employing about 1350 employees and did so in a period of 4 days.

Accordingly, in order to prevent these blatant violations of the International Constitution and to protect the collective bargaining rights of Teamsters Local Union 703 and to ensure that the continued representation and benefits to which the members of Local Union 703 are entitled, I am imposing an emergency trusteeship over the affairs of Local Union 703 effective on this date. I have appointed Vice-President Daniel C. Liguoritis to serve as Trustee. Pursuant to the procedures set forth in Article VI, Section 5 of the International Constitution, the members will soon be receiving notice of a hearing to determine whether the temporary emergency Trusteeship shall be extended or dissolved. Separate notice of that hearing shall be posted by the Trustee.

A copy of this notice should be posted immediately in the Local Union headquarters and such other places as will ensure that the members of the Local are informed of the imposition of this emergency Trusteeship.¹⁸

Also transmitted to Chicago from Washington was a memorandum, signed by McCarthy and addressed "To Whom It May Concern," which served as a notice of the appointment of Liguoritis as trustee. The documents in evidence disclose that the letter and notices were faxed from Washington, D.C., to Chicago on October 4 at 10:15 a.m. Washington time.

On the same day that the above-recited documents were being sent to Chicago, the Executive Board of Local 703 IBT executed and served on all the Respondent Employers the following document, which was prepared on the letterhead of Local 703 IBT:

October 4, 1990

DISCLAIMER OF INTEREST

You are hereby advised that the Produce, Fresh and Frozen Fruits and Vegetables, Fish, Butter, Eggs, Cheese, Poultry, Florist, Nursery, Landscape and Allied Employees, Drivers, Chauffeurs, Warehousemen and Helpers Union, Chicago and Vicinity, Illinois, Local 703, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union of America, hereby disclaims interest in representing the employees employed by the [Company]. In accordance with the authorization given by the employees and agreement entered into between Local 703, Local 707, and the Employer, Local 707 is now the sole and exclusive collective bargaining agent for those employees.

The document was signed by every officer and trustee of Local 703 IBT, except Lucien Senese who, as indicated previously, was unavailable for duty.

In the case of Mavo, Pennington phoned Mavigliano directly and informed him that the disclaimer had been executed. He delivered it later. He also brought a copy to Dominick's. There is a conflict in the record as to whether Pennington handed the disclaimer directly to Lamonia on October 4 or left it at Dominick's. In any event, Lamonia

had it in his possession on October 5. Certified admits receiving a copy of the disclaimer the following week. Joseph testified that the members of the now deposed Local 703 IBT executive board delivered copies of the disclaimer to all employers with whom the Local had a contract, including those who did not sign a memorandum of agreement and did not agree to joint representation.

On October 5, Liguoritis called the members of the Local 703 IBT executive board into the union office to give them personal notice of the trusteeship. He assured the members of the executive board that he would give them his cooperation and asked for theirs. He said that the first order of business was to post copies of the trusteeship notice at the places of business of every employer with whom the Local had a contract. Liguoritis assigned individuals who were officers of his own local, No. 705, to go with Local 703 IBT executive board members to each "barn" where Local 703 IBT had a contract to post trusteeship notices. At that time, he took no action regarding any of the Local 703 IBT executive board members, who remained on the payroll of the Local subject to Liguoritis' supervision.

During that same week and the following week,¹⁹ Local 703 IBT executive board members went back to the warehouses where they had collected authorization petitions for joint representation and began, with the help of their stewards, to collect authorization and checkoff cards in favor of Truck Drivers Local 707 NPWU. These cards, printed in the form of conventional union designation cards, read, in pertinent part:

PRODUCE, FRESH & FROZEN FRUITS & VEGETABLES, FISH, BUTTER, EGGS, CHEESE, POULTRY, FLORIST, NURSERY, LANDSCAPE & ALLIED EMPLOYEES, DRIVERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS UNION, LOCAL 703, A DIVISION OF TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION LOCAL 707, Affiliated with the N.P.W.U.

APPLICATION FOR MEMBERSHIP

I, [printed name of applicant], hereby apply for admission to membership in the above Local Union and voluntarily choose and designate it as my representative for purposes of collective bargaining, hereby revoking any contrary designation. If admitted to membership, I agree to abide by the Constitution of the National as well as the Local Union Bylaws which are not in conflict with the National laws. I will faithfully perform all the duties assigned to me to the best of my ability and skill. I will conduct myself at all times in a manner as not to bring reproach upon my Union. I shall take an affirmative part in the business and activities of the Union and accept and discharge my responsibilities during any authorized strike or lockout. I will never discriminate against a fellow worker on account of creed, color, or nationality. I will at all times bear true and faithful allegiance to the National and this Local Union.

¹⁸ By later action, dated February 19, 1991, the general president transformed the temporary trusteeship into a permanent one.

¹⁹ Many of the checkoff authorization cards in evidence were dated before the trusteeship was imposed. They also referred to Local 703, a division of Local 707, although that division was not formally established until October 15.

EMPLOYEE'S SIGNATURE _____

CHECKOFF AUTHORIZATION AND ASSIGNMENT

I, the undersigned hereby authorize and direct my employer every month to deduct from my wages all initiation fees, reinstatement fees, membership dues and uniform assessment as required by the above Local Union, or its legal successor. I further authorize and direct that these moneys so deducted be turned over each month to the above Local Union.

The card then provided for a second signature and additional information concerning the employee, including his address, social security number, and the name of his employer.²⁰

Like the petitions which had been signed a week or so earlier, these cards were executed by employees who, for the most part, were on the clock. They were solicited by shop stewards who were also on the clock. On October 9, Pennington visited Lamonia at his office in North Lake another time. He gave Lamonia 318 cards collected from Dominick's employees in a unit of about 398 and 74 cards collected from Donna's employees in a unit of about 93. Based on those cards, Dominick's began to deduct monthly union dues from the Dominick's and Donna's employees who had authorized checkoffs and to forward the amounts checked off to Truck Drivers Local 707 NPWU. On the same day, Pennington delivered 126 cards to Mavigliano at the Mavo office, covering a unit of about 175 drivers. Based on those and other cards signed subsequently, Mavo began to deduct monthly union dues from its drivers and to forward the amounts checked off to Truck Drivers Local 707 NPWU. On October 17, Joseph and former Local 703 IBT Trustee and Business Representative Vincent Gregosanc delivered cards signed by a majority of Certified employees in the Local 703 IBT bargaining unit to Certified's vice president for human resources, Ted Clinnin, and to Greenberg. Based upon those cards, Certified began to deduct monthly dues from its drivers and to forward those amounts to Truck Drivers Local 707 NPWU, while still remitting dues to Local 703 IBT for employees who opted to remain with that union.

In the week following the imposition of the trusteeship, Ligurotis wrote the following letter on Local 703 IBT letterhead to all members of the Local, dated October 9. The letter read:

First, let me introduce myself. I am a Vice President of the International Union, President of Teamsters Joint Council No. 25 made up of 24 local unions from Chicago to Rockford to Gary, Indiana to Kankakee to Wisconsin, and Secretary-Treasurer of Local 705 in Chi-

cago. On October 4, 1990, I was appointed by the International Union as trustee of Local 703. The reasons for the Trusteeship are set out in the notice which has been posted at work locations and given to your employer. A copy of the Notice is enclosed. I want to assure you of the following:

1. *No matter what anyone has told you, you are a member of Local 703 and only Local 703 is your collective bargaining agent.*

2. You are as fully covered under your Welfare Fund and Pension Fund as you were before the events which resulted in the Trusteeship.

3. No officer or business representative in place as of October 4, 1990, has any authority to act or speak for Local 703. Until further notice, any grievance or question should be made directly to me at Teamsters Joint Council No. 25, 300 South Ashland Avenue, Room 206, Chicago, Illinois 60607, telephone number 312/421-2600. Please ask for the Trustee or the Assistant Trustee if you are calling.

Under the International Constitution, as Trustee I have *complete* control and authority over all of the assets and administration of Local 703 including without limit the authority to sign checks, remove officers, business representatives and employees and appoint successors, and negotiate and administer collective bargaining agreements including grievances.

The membership meeting for October 26, 1990 has been canceled. I will be communicating with you so that you will be fully informed.

Again, do not let anyone confuse you about your membership. You are a member of Local 703 only, and I will take all legal action on 20 behalf of Local 703 to ensure it. [Emphasis in the original.]

On October 12, one week after Ligurotis had met with the former Local 703 IBT executive board members and had directed them to serve notices of trusteeship at all locations where the Union had a contract, a second meeting was held by Ligurotis with the same individuals at the same office. Ligurotis told them that he had learned that they were continuing to do the same things which had resulted in the placing of the Local in trusteeship and asked each of them directly if they were continuing to solicit members to switch membership to Truck Drivers Local 707 NPWU. No one replied, so Ligurotis told them that they were fired and directed them to turn in any property in their possession belonging to the Local. On the following Monday, Joseph and all the deposed officials of Local 703 IBT were hired by Truck Drivers Local 707 NPWU and were given job titles in its newly created Local 703 division similar to the titles which they had held with Local 703 IBT.

They have continued to act as business representatives of the Respondent Local since that time in any of the bargaining units where Respondent Truck Drivers Local 707 NPWU has been accorded recognition. Respondents Mavo, Dominick's, and Donna's have given Truck Drivers Local 707 NPWU exclusive recognition since October 4, 1990, while Certified permits representatives of both contending unions to come on its property and to process grievances individually on behalf of any employee who asks either union to file a grievance. Dues are checked off by Certified and re-

²⁰ It should be noted that the application for membership was directed to Local 703, a division of Local 707. This was in accord with the original agreement between Joseph and Cappitelli, but no formal action was taken by Local 707 to establish Local 703, division of Local 707, until a week or so after all the authorization cards were signed. To date, Local 703, as a division of Local 707, has a hazy and questionable existence. The officers of the division are appointed by Cappitelli. The division has no independent treasury and all dues which are remitted pursuant to these checkoff authorizations are collected by Local 707 and placed in its general treasury. Officers of the division, including Joseph, Pennington, Monaco, and others, are paid on checks drawn on the Local 707 treasury.

mitted to whichever union is designated in the checkoff authorization on file.²¹

On or about October 19, Donald Heim, who was then acting as an assistant to the Local 703 IBT trustee, phoned Lamonia and asked him why Local 703 IBT representatives were not being allowed to visit Dominick's premises to speak with their members. Lamonia replied that Dominick's had signed an agreement with Local 707 and was recognizing Local 707 as the bargaining agent of its employees. Heim argued with Lamonia, claiming that Dominick's had signed a contract with Local 703 IBT and was still submitting fringe benefit payments to Local 703 trust funds. They argued further but neither party changed his position.

By the end of October, Ligurotis had become one of the two union trustees on the fringe benefit trust funds covering Local 703 IBT members. On or about October 30, he sent a form letter, on Local 703 IBT stationery, to 25 or 30 employees employed in the various bargaining units involved in this case in which he stated:

To date we have not received your initiation fee/dues. Until we do we cannot process your medical benefit card.

After a charge was filed against Local 703 IBT by Truck Drivers Local 707 NPWU arising out of this letter, Ligurotis wrote a second letter, dated March 1, 1991, to the recipients of the first letter and also to about 2600 members of Local 703 IBT and "all participants in Local 703 benefit funds and employees." The March 1 letter, addressed to "Dear Member and/or Participant," read:

I am writing to advise you of recent developments involving the Local 703 Benefit funds. You should understand that I hold two separate positions and act in a different capacity with respect to the Local and the Benefit Funds. I am an Employee Trustee of the Benefit Funds and by virtue of a decision by the International President I am in charge of the Local as Trustee of it.

First: By a decision and notice dated February 19, 1991 the International President confirmed my role as being in charge of the Local. Copies of that notice have been distributed and I recommend you read it.

Second: As Benefit Fund trustee I instructed my attorneys to do what had to be done to make it legal for all employees employed by an employer who made contributions to a 703 Benefit Fund to be enrolled by that Fund and have their claims processed in the usual and customary manner so benefits may be paid to all eligible employees. That has been done.

I know there has been confusion created by those who would undermine this union and the employers eager to help them, but my role in running the Local has been confirmed and I am no longer here on an "acting" or "temporary" basis. The period of confusion is at an end. I am confident that the NLRB will uphold Local 703's position. We will take all lawful ac-

tion wherever and whenever necessary to protect your wages, benefits and working conditions and as an employee Trustee of the Funds I will do everything I can to see to it that every participant and beneficiary of the Funds receives all the Benefits to which they are entitled.

At this same time, a class action suit was instituted against Local 703 IBT in the United States District Court for the Northern District of Illinois²² by several trust fund beneficiaries relating to their eligibility for benefits under those trust funds. On April 8, 1991, a temporary consent order was issued in that case. It provided, among other things, that contributions to any of the Local 703 IBT funds would be considered "a demand for and/or receipt of, money or other things of value as provided for in, and in accordance with, 29 U.S.C. Sec. 186(c)(5)." The Order further provided:

2. Upon receipt from an employee by the Funds of their usual and customary enrollment forms, with or without the stamp referred to in Section 7 below . . . the funds will add the employee's name to the Employer Monthly Contribution Report, a copy of which is attached as Exhibit 3. Such enrollment cards will be used solely for Fund purposes and not as evidence of support for or authorization of a labor organization.

3. Claims will be processed using the funds' usual and customary forms with or without the stamp referred to in Section 7 below, and benefits will be paid to eligible participants and beneficiaries in accordance with the eligibility and benefit provisions of the Funds.

4. No otherwise eligible employee, participant, or their beneficiary will be denied enrollment or benefits because of issues relating to union membership.

III. ANALYSIS AND CONCLUSIONS

A. Application of the Contract-Bar Rule

Respondent Truck Drivers Local 707 NPWU claims an entitlement to current recognition by each of the Respondent Employers in the four bargaining units still involved in this consolidated case because, in late September 1990, it obtained the signatures of approximately 628 employees out of an estimated 835 members of those bargaining units—and a majority in each unit—²³ on a set of petitions which authorized joint representation with Local 703 IBT and separate or individual representation if either union should disclaim.²⁴ In

²² *Mendoza v. Local 703 IBT*, No. 91 C 425.

²³ This enumeration excludes the 514 signatures of Market Services employees that were collected at the South Water Street Market.

²⁴ In its brief, Respondent Truck Drivers Local 707 NPWU asserts that the actions of Joseph and his colleagues, while still serving as members of the executive board of Local 707 IBT in late September and early October 1990, should not be attributed to it by any theory of vicarious liability and that they should not be deemed agents of the Respondent until they were hired on October 15, 1990, after being discharged by Ligurotis. The plan to transfer both the assets and the membership of Local 703 IBT was first conceived in early September, was part of an agreement between Joseph and Cappitelli, and was carried out with the assistance of the attorney for Truck Drivers Local 707 NPWU. The memorandum of agreement, signed by participating employers on or about September 28 in furtherance of this plan, bore the signatures in each instance of officials of both

²¹ Before the settlement agreement which was approved by me on December 31, 1991, Respondent Market Services was also following the same policy of recognizing both unions, not jointly but individually, depending upon which one was selected by an individual employee grievant.

light of this asserted exercise in trade union democracy, both this Union and its contracting employers believe that the Board should honor the stated choice of bargaining unit members to leave Local 703 IBT behind and find a more congenial home with the National Production Workers, where their selection of local officers will be honored and their chosen representatives will be allowed to function on their behalf. On the other hand, Local 703 IBT, acting under its current leadership, and the General Counsel argue that these signatures were the product of coercion, wholesale misrepresentation, and employer assistance and that, in any event, the employees in the affected bargaining units were not at liberty to change bargaining representatives when they did because of the Board's contract-bar rule. This rule allows a determination of questions concerning representation only at stated intervals, none of which were present when the events at issue in this case occurred.

The contract-bar rule is not a part of the Act itself but has been applied by the Board by rule of decision in representation cases almost since the inception of the Agency.²⁵ The purpose of the contract-bar rule has been repeated many times over the years in cases arising under Section 9 of the Act—to provide for stability in labor relations and to permit the benefits of collective bargaining, as finalized in labor-management agreements, to come to fruition throughout a full contract term.

Accordingly, election petitions may not be processed during the pendency of collective-bargaining agreements, except during a stated period at the end of an agreement,²⁶ and petitions to certify another union or to decertify an incumbent union filed at other times will be dismissed. The case law holds, and the parties herein are in agreement, that I have an obligation to follow the contract bar rule, if applicable, in a complaint case arising under Section 8(a)(5) of the Act as well as in a representation case arising under Section 9 of the Act. *Sanson Hosiery Mills*, 92 NLRB 1102 (1950); *Hexon Furniture Co.*, 111 NLRB 342 (1955); *Westwood Import Co.*, 251 NLRB 1213 (1980). According to the General Counsel's reckoning, which is unchallenged as to the applicability of the *Leonard Wholesale Meats* rule, the Mavo, Dominick's, and Donna's contracts, all of which originally extended from January 1, 1987, for 33 months until March

31, 1990, each had an open date for the raising of a question concerning representation during October 1989, which was 60 to 90 days before the third anniversary of the effective dates of those contracts. Since they were prematurely extended in 1988, for an extraordinary if not unprecedented period of 8 years, the contract bar rules would permit the raising of such questions again in October 1992, and October 1995. At all other times, petitions would be barred and so would any change of representatives in the context of a refusal-to-bargain complaint arising under Section 8(a)(5) of the Act. In the case of Certified, whose 3-year contract originally ran from April 1, 1988, to March 31, 1991, the open period for changing a bargaining representative would fall in January 1991. Hence, a question concerning representation could not properly have been raised in September or October 1990 when Certified ceased giving exclusive recognition to Local 703 IBT, as required by its outstanding contract, and bestowed upon Local 703 IBT and its rival first joint and later separate but unexclusive recognition.

Tested by normal contract-bar standards, the Respondent Employers in this case were required, when presented by either a memorandum of agreement, a supporting petition, or a disclaimer of interest to have ignored them and to have adhered to their outstanding contracts which, in each instance, obligated them to accord exclusive, not joint or several, recognition to that Union. Had they done so, great mischief would have been avoided. If, in the face of their purported dilemma, they had wished to invoke the processes of the Board, any of these Respondent Employers could have filed a representation petition in late September, 1990, and would have been told quickly and inexpensively in the context of a Section 9 proceeding what their rights and responsibilities were. To a complaint voiced at the hearing that the remedies of the Board sometimes prove inadequate to an employer anticipating a job action which might occur in response to a refusal to cave in to an illegal recognition demand, Section 8(b)(7) of the Act provides not only a Board remedy but also provisions for application to a district court for immediate injunctive relief under Section 10(l) of the Act. The ease and celerity with which these employers acceded to extraordinary requests to substitute one bargaining agent for another during a contract term give rise to an inference that these employers were not dealing with the former leadership of Local 703 IBT at arm's length. These factors also warrant the conclusion that the Respondents are entitled to no equities as innocent bystanders who were simply "caught in the middle."

To the General Counsel's allegation that the Respondent Employers were duty bound under the Board's contract-bar rules to continue to recognize Local 703 IBT *exclusively* in late September and early October under the terms of existing contracts, the Respondents have advanced several defenses. First of all, they claim that the decision of Local 703 IBT members to leave the Teamsters and to join the NPWU was an internal union matter into which their employers should not intrude. Local 703 IBT was, and remains, a chartered local of the International Brotherhood of Teamsters, an AFL-CIO affiliate. Each Respondent Employer was faced with a situation in which the members of its bargaining unit were proposing, through a two-step process, to leave Local 703 IBT and become members of another union affiliated with another independent national union. By asking each employer to cease recognizing Local 703 IBT, either partially or en-

Unions. In soliciting signatures, Local 703 IBT representatives were quite explicit in telling members that, in the event of a government takeover, their union would leave the Teamsters and seek an "umbrella" under the National Production Workers and its affiliated local. In light of this background, it is clear beyond peradventure that Joseph and his colleagues were acting as agents of Truck Drivers Local 707 NPWU at a time when they were perfidiously serving as officers and trustees of their own local. As such, their actions from mid-September forward constitute acts and conduct for which Respondent Truck Drivers Local 707 NPWU is legally responsible.

²⁵ See, for example, *American France Line*, 9 NLRB 439 (1938), and *Colonie Fibre Co.*, 9 NLRB 658 (1938).

²⁶ In *Deluxe Metal Furniture Co.*, 121 NLRB 995 (1958), the Board held that a representation petition would be deemed timely if it was filed within a period of 60 to 150 days before the termination date of a 3-year contract or the third anniversary of a longer contract. That period was later narrowed to 60 to 90 days before the third anniversary. *Leonard Wholesale Meats*, 136 NLRB 1000 (1962). The latter rule, slightly revised by *General Cable Corp.*, 139 NLRB 1123 (1962), and *H. L. Klion, Inc.*, 148 NLRB 656 (1964), has been in effect for 30 years.

tirely, and to recognize another bargaining agent for their employees, former Local 703 IBT officials were raising a question concerning representation which necessarily brought into play the contract-bar rules discussed above.

In particular, Certified argues that what was proposed by Joseph and what actually occurred was merely a decision by a union local to disaffiliate from one parent union and affiliate with another. It cites *May Department Stores v. NLRB*, 897 F.2d 221 (7th Cir. 1990), and other cases for the proposition that a decision by a union to affiliate or disaffiliate is a private union matter. See also *Insulfab Plastics*, 274 NLRB 817 (1985), *enfd.* 789 F.2d 961 (1st Cir. 1986). However, in this case, Local 703 IBT as an entity has never disaffiliated from the Teamsters International or attempted to affiliate with any other parent organization. About 20 percent of its membership, located in many small bargaining units throughout the Chicago area, never attempted to seek joint representation status with Truck Drivers Local 707 NPWU nor to disclaim the bargaining rights of Local 703 IBT with their respective employers. Throughout this dispute they have continued to be represented by Local 703 IBT, a union which itself still maintains a charter with the Teamsters International and is, indeed, now more closely identified than ever with its International through the imposition of a trusteeship. What the Senese faction attempted to do here was to strip Local 703 IBT of most of its membership and all of its assets and deliver both, in bulk, to a rival union as the property of that union, leaving behind a collective shell with a name and a charter and a small, bankrupt membership. This action was not an affiliation or a reaffiliation but something akin to larceny²⁷ and does not in any way minimize or remove the existence of a question concerning representation or the rules which such a question calls into play.

Dominick's and Donna's argue that the contract-bar rules are inapplicable to the facts in this case because such rules never come into play unless a question concerning representation arises. In their view, no such question has arisen here because everyone involved in these transactions was in agreement and no one questioned either the disclaimer of exclusive bargaining rights by one union or the assumption of those rights by another. In short, they ask what is a contract bar among friends? One prong of this argument is to analogize the substitution of bargaining agents during a contract term to the midterm revision of a substantive provision of a contract which pertains to wages or other terms and conditions of employment. Amending a contract in regard to wages or working conditions is plainly the prerogative of contracting parties where there is unanimous agreement. *Vanadium Corp.*, 117 NLRB 1390 (1958). However, their analogy is a false one, since a change in wages, hours, or other conditions of employment cannot, by its nature, raise a question concerning representation while a change in the identity of the contracting union necessarily affects this matter.

They also point to several exceptions to the contract-bar rule. They note that the rule will not be applied in the case of a schism at the international level of a signatory local, nor

will it be applied when a contracting union has become defunct. *Hershey Chocolate Corp.*, 121 NLRB 901 (1958); *Quemetco, Inc.*, 226 NLRB 1398 (1976). Moreover, an existing contract will not bar the holding of an election where the contracting union has disclaimed any interest in further representing bargaining unit employees. *National By-Products Co.*, 122 NLRB 234 (1958); *Mantowoc Shipbuilding*, 191 NLRB 786 (1971); *Plough, Inc.*, 203 NLRB 121 (1973); *Electrical Workers IBEW Local 58 (Thomas Edison Club)*, 234 NLRB 633 (1978). The answer to this contention is that Local 703 IBT is plainly not defunct nor has there been a schism at the international level of its parent organization similar to the one that occurred in the Bakery Workers International giving rise to the *Hershey Chocolate* case.

Respondent employers and Truck Drivers Local 707 NPWU also argue that the Board should honor at face value the disclaimers which were hurriedly executed on October 4, 1990, by former executive board members of Local 703 IBT and served upon contracting employers just before notices of trusteeship were delivered. The Board has held that it will not honor a disclaimer and permit an election or a change of representatives where the disclaimer is the product of collusion or is being used as a stratagem to achieve purposes which are inimical to the purposes and policies of the Act. *Mack Truck*, 209 NLRB 1003 (1974); *East Mfg. Corp.*, 242 NLRB 5 (1979). It is no defense to the Respondents herein to contend, as they do, that the disclaimers in question in this case are not the product of collusion, as in *Mack Truck*, because everyone who was a party to the procedure and actually agreed to the arrangement. It is certainly inimical to the purposes and policies of the Act to permit a disloyal set of union officials, acting under the threat of expulsion from office, to execute either disclaimers or any other documents in violation of their trust for the purpose of avoiding the impact of a Federal court order or of defeating the efforts of their international to purge from its midst the taint of organized crime. Had the members of Local 703 IBT or any of its bargaining units wished to select another labor organization to represent them, they were at liberty to do so at appropriate intervals, either by filing a representation petition or possibly by executing authorization cards in favor of another union. However, in selecting a new bargaining agent and abandoning Local 703 IBT, they would by that act be leaving behind their former representative, with all of its assets and benefits, selecting a new and different bargaining agent with all of its assets and benefits, if any. This is not what the former executive board of Local 703 IBT and their supporters tried to do. What they were attempting to arrange, as noted previously, was the gutting of one labor organization to the consequent enrichment of another and to the detriment of those who remained loyal to Local 703 IBT. There is no justification for the Board to honor a disclaimer of bargaining rights designed to effectuate such a result and I decline to do so. Accordingly, I conclude that, when the Respondent Employers accorded joint recognition to both labor organizations involved in this case and then transferred that recognition, either exclusively or otherwise, to Respondent Truck Drivers Local 707 NPWU, they were precluded from doing so by the Board's contract bar rules. Hence, by refusing to continue to recognize Local 703 IBT as the *exclusive* representative of their employees, each Respondent Employer violated Section 8(a)(1) and (5) of the Act. By conferring such rights upon

²⁷ It is of more than passing interest that, in setting up the procedure for merging the assets of some Local 703 trust funds and in revising the procedure for selecting union trustees for each of those funds, Joseph and others consulted not only trust fund specialists but two criminal lawyers in active practice.

Truck Drivers Local 707 NPWU they violated Section 8(a)(1) and (2) of the Act. By accepting such recognition under these circumstances, Respondent Truck Drivers Local 707 NPWU violated Section 8(b)(1)(A) and (2) of the Act. By giving effect to a union-security clause and by checking off union dues and fees under such circumstances, Respondent Employer also committed a violation of Section 8(a)(1) and (2) of the Act. It follows that the receipt of such benefits by a labor organization under such circumstances violates Section 8(b)(1)(A) and (2) of the Act. *McKesson Drug Co.*, 257 NLRB 468 (1981).

*B. The Authority of the Senese Faction to Transfer
Bargaining Rights of Local 703 IBT to Another
Labor Organization*

The Taft-Hartley Act amendments to the Act in 1947 defined the vicarious responsibility of a respondent in a Board proceeding rather broadly:

In determining whether any person is acting as an agent of another so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling. [Sec. 2(3), Labor-Management Relations Act.]

In the seminal case which applied this standard to labor organizations, the Board went beyond the language of the Act and held that it would find an agency relationship even for acts of an agent which were specifically prohibited by the principal. *Longshoremen ILWU (Sunset Line)*, 79 NLRB 1487 (1948). In so holding, the Board stated:

The Act, as amended, nevisages that the Board shall now hold labor organizations responsible for conduct of their agents which is proscribed by Section 10(b) of the status, just as it has always held employers responsible for the acts of their agents which were violative of Section 8(a). For this purpose we are to treat labor organizations as legal entities, like corporations, which act, and can only act, through their duly appointed agents, as distinguished from their individual members. [Id. at 1507, 1508.]

It also held to the common law view that the burden of proof is on the party asserting an agency relationship, both as to the existence of the relationship and as to the nature and extent of the agent's authority. Id. at 1508. In this case, the General Counsel and the Charging Party argue that, in carrying out the plan which resulted in a transfer of bargaining rights and an attempted transfer of assets to Truck Drivers Local 707, NPWU, the former members of the Local 703 IBT executive board were acting ultra vires, so each of the constituent acts which brought about the recognition of the Respondent Union were null and void and of no legal force and effect. The Respondent Union and the Respondent Employers maintain that Joseph and the other members of the Senese faction were, at the time these events transpired, duly authorized officials of Local 703 IBT and held at least apparent if not actual authority to act on behalf of that union in any dealing with outside entities. Accordingly, Local 703 IBT and anyone else who might be affected by these transactions should be legally bound by what Joseph and his col-

leagues did, so all Respondents were legally entitled to proceed at all times material herein in reliance on the efficacy of the various memoranda of agreement and the disclaimers of interest in representing employees, as well as the new Truck Drivers Local 707 NPWU union designation cards and checkoff authorizations which were presented to the various employers by members of the Senese faction early in October 1990.

Article XIX, section 6(b)(4) of the constitution and bylaws of the Teamsters International, applicable to all "members, officers, elected business agents, local unions, joint councils, and other subordinate bodies," outlaws "secession, or fostering the same." Article XIII, section 5(d) of the constitution and bylaws of Local 703 IBT provides "No member shall engage in dual unionism or espouse dual unionism or disaffiliation; or be a party to any activity to secure the disestablishment of the Local Union as the collective bargaining agent for any employee." Tested by these clear statements demanding unconditional loyalty on the part of both members and officers of any Teamsters-affiliated union, it is clear that the actions of Joseph and the other members of the Local 703 IBT executive board were ultra vires when they agreed to joint representation of members of Local 703 IBT bargaining units with another labor organization ("dual unionism") and when they disclaimed the interest of Local 703 IBT in representing those members ("disestablishment of the Local Union as the collective bargaining agent of any employee"). Because such actions on their part were ultra vires, they were void ab initio.

However, the Respondent Employers and Respondent Truck Drivers Local 707 NPWU claim ignorance of the provisions of the Local and International constitution and assert that they had every right to assume that the duly elected or appointed representatives of the Union with whom they were dealing—and had dealt for a number of years—were fully authorized to take the actions which were taken by Local 703 IBT representatives in late September and early October 1990. In short, they invoke the doctrine of apparent authority (see Restatement 2d, *Agency* § 261). However, they provide little, if anything, by way of evidence to support this contention. As for Respondent Truck Drivers Local 707 NPWU, their culpability in this case is derived, in substantial part, from the actions of Joseph and other members of the Senese faction who were members of the Local 703 IBT executive board and who, as noted above, were also acting as agents of the Respondent Union from the time Joseph and Cappitelli agreed to put this project in motion. Accordingly, Respondent Truck Drivers Local 707 NPWU can claim no benefit from the doctrine of apparent authority, since Joseph and his colleagues were well aware of the limitations on their authority as Teamsters officials and this knowledge must necessarily be imputed to the other principal on whose behalf they were also acting.

In the case of the Respondent Employers, it should have been apparent from the outset of their dealings with Joseph that what he was requesting of them was their participation in an extraordinary if not unprecedented transaction. A large and wealthy labor organization was in the process of committing suicide before their very eyes and they did not so

much as raise an eyebrow.²⁸ Their defense of apparent authority is quite dubious, in light of the principle set forth in the Agency 2d, *Restatement* that “any substantial departure by an agent from the usual method of conducting business is ordinarily a sufficient warning of lack of authorization.” *Supra*, § 166(a).

However, any claim by the Respondent Employers to have been acting in good faith in relying upon the apparent authority of Joseph and other members of the Senese faction of Local 703 IBT to engage in ultra vires acts was put at an end by the action of the Teamsters International on October 4 in appointing a trustee to take over and operate the affairs of Local 703 IBT and by the action of the trustee in posting notices of the trusteeship on October 5 at all places of business where the Local had contracts. At that point, Respondent Employers were obligated to cease and desist from giving any further force or effect either to the memorandum of agreement which they signed or to the disclaimer of interest which they had received. Having failed to do so and having persisted in adhering to the provisions of these documents in the face of clear notice of their invalidity, they dispelled any contention that they were dealing with the duly designated collective-bargaining representatives of their employees in good faith.

C. The Acts and Conduct of Respondent Local 703 IBT in Requiring Union Membership as a Prerequisite for Eligibility for Medical Benefits in Local 703 IBT Jointly Administered Funds

In late October 1990, Lugurotis wrote a letter to about 25 or 30 employees in which he stated, in effect, that they would not be eligible for benefits under the Local 703 IBT jointly administered medical benefit fund unless they first joined the Local. Four months later, he wrote a widely circulated letter which repudiated his earlier letter. He then informed the recipients of the second letter that they would not be required to join the Local to enjoy medical benefits and that nonmembers would, under a stated procedure, be allowed to participate. There is no evidence that any employee was actually denied medical or hospital benefits because of nonmembership in the Local.

The General Counsel alleges that the first letter violated Section 8(b)(1)(A) of the Act because a union “is required to treat fairly, impartially, and in good faith every employee whom it represents. . . . Section 9(a) of the Act provides specifically that a collective-bargaining representative shall

represent ‘all the employees in such unit.’” She points out that “The Board has held that the union’s failure to represent its members for this reason [nonmembership] was arbitrary and constituted a failure of the union’s fiduciary duty to fairly represent all members of the bargaining unit.” In her view, the letter constitutes a threat to deprive nonmembers of the fiduciary duty owed to them by Local 703 IBT.

The flaw in the General Counsel’s argument is that, by providing medical benefits to persons who were employed in bargaining units which were then being represented by Truck Drivers Local 707 NPWU, Respondent Local 703 IBT was being called upon to represent employees in a bargaining unit where it was being denied representation rights and where it was not being recognized as the exclusive bargaining agent of unit employees. Under this almost unprecedented set of facts, Respondent Local 703 IBT had no such duty as the one being championed in this consolidated case by the General Counsel. Indeed, as Respondent Local 703 IBT pointed out, it was perilously close to committing a criminal offense under the Landrum-Griffin Act²⁹ by extending medical benefits to nonmembers outside the units it represented because, in doing so, it would be required to accept money from an employer who was not recognizing it as the exclusive bargaining agent in a bargaining unit where Local 703 IBT was being denied the representation rights which the General Counsel alleges it was not fairly exercising and when the Union had no contract which was being honored that would authorize those payments. Not until Respondent Local 703 IBT became covered by the terms of a Federal court order assuring it that the trust fund moneys in question were proper payments under the Landrum-Griffin Act could it rest assured that it would not be criminally prosecuted for doing what the General Counsel contends it should have been doing all along. In light of these circumstances, the letter in question did not constitute a breach of the Respondent’s duty of fair representation or a threat to breach that duty. Accordingly, I will recommend that so much of the consolidated complaint that alleges that Respondent Local 703 IBT violated Section 8(b)(1)(A) of the Act be dismissed.

CONCLUSIONS OF LAW

1. The Respondents Dominick’s Finer Foods, Inc., Donna’s Distribution, Certified Grocers Midwest, Inc., and Mavo Leasing, and each of them, are now and at all times material have been, employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondents Produce, Fresh & Frozen Fruits & Vegetables, Fish, Butter, Eggs, Cheese, Poultry, Florists, Nursery, Landscape & Allied Employees, Drivers, Chauffeurs, Warehousemen & Helpers Union, Local 703, International Brotherhood of Teamsters, AFL-CIO, and Produce, Fresh & Frozen Fruits and Vegetables, Fish, Butter, Eggs, Cheese, Poultry, Florists, Nursery, Landscape & Allied Employees, Drivers, Chauffeurs, Warehousemen & Helpers Union, Local 703, a division of Truck Drivers, Chauffeurs, Warehousemen and Helpers Union Local 707, affiliated with the National Production Workers Union, and each of them, are labor organizations within the meaning of Section 2(5) of the Act.

²⁸ During the investigation of this case, Joseph submitted a letter to the Regional Office explaining why he and others took the actions they did in leaving the Teamsters and joining an independent union. Those reasons alleged inadequate pension benefits, sell-out contracts, kangaroo court grievance procedures, two-tiered wage systems, under-representation of Canadian members on the general executive board, and support of Republican politicians for office. While soliciting petition signatures, they told their members that they were facilitating a possible removal of Local 703 from the Teamsters to prevent a takeover either by the government or a trustee appointed by the International. Closer to the truth is the reason given by Joseph in his testimony in this proceeding. The executive board members were acting as they did to save their own jobs. However, a resolution of this case does not turn on either motivation or justification but on the authority of the parties to this proceeding to do what they did and their timing in doing it.

²⁹ Sec. 302, Labor-Management Relations Act of 1959.

3. All full-time and regular part-time warehousemen employed by Dominick's at its North Lake, Illinois warehouses and at any facility operated by Dominick's within 75 miles from these warehouses, and all warehouse personnel employed by Donna's at its 42d Place warehouse in Chicago, Illinois, excluding sales personnel, office clerical employees, guards and supervisors within the meaning of the Act, constitute respectively individual bargaining units which are appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

4. All full-time and regular part-time drivers and warehousemen employed by Certified at its Hodgkins, Illinois warehouse, excluding sales personnel, office clerical employees, guards, and supervisors within the meaning of the Act, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

5. All full-time and regular part-time truckdrivers employed by Mavo who are domiciled at the Dominick's North Lake, Illinois warehouses and at the Donna's warehouse on 42d Place in Chicago, Illinois, excluding warehousemen, sales personnel, office clerical employees, guards, and supervisors constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

6. At all times material, Local 703 IBT has been and is the exclusive collective-bargaining representative of all the employees in the respective units found appropriate in Conclusions of Law 3, 4, and 5 for the purpose of collective bargaining, within the meaning of Section 9(a) of the Act.

7. By withdrawing recognition from Local 703 IBT as the exclusive collective-bargaining representative of their employees in the respective units set forth above, notwithstanding the fact that Local 703 IBT was at all times material the designated collective-bargaining representative of said employees; by failing and refusing to give full force and effect to outstanding collective agreements which contractually bound it to Local 703 IBT covering the bargaining units set forth above; and by granting either exclusive or joint recognition to Respondent Truck Drivers Local 707 NPWU, in the aforesaid bargaining units, the respective employers named in Conclusion of Law 1, and each of them, violated Section 8(a)(5) of the Act.

8. By conferring upon Respondent Truck Drivers Local 707 NPWU either exclusive or joint recognition as the collective-bargaining representative of the employees in the aforesaid units when employees did not represent an uncoerced majority of employees in the units and when the employees were represented by another labor organization, the respective employers named in Conclusion of Law 1, and each of them, violated Section 8(a)(2) of the Act.

9. By the acts and conduct set forth above in Conclusions of Law 7 and 8, and by failing and refusing to give full force and effect to lawful union-security clauses covering employees employed in each of the aforesaid bargaining units requiring membership in Local 703 IBT as a condition of continued employment on and after their 31st day of employment, the employers named in Conclusion of Law 1, and each of them, violated Section 8(a)(3) of the Act.

10. The aforesaid unfair labor practices constitute violations of Section 8(a)(1) of the Act and have a close, intimate, and adverse effect on the free flow of commerce within the meaning of Section 2(6) and (7) of the Act.

11. By entering into collective-bargaining agreements with Dominick's, Donna's, and Mavo and enforcing union-security provisions in the agreements requiring membership in Respondent Truck Drivers Local 707 NPWU as a condition of employment after 30 days of employment, said Union violated Section 8(b)(2) of the Act.

12. By the acts and conduct set forth above in Conclusion of Law 11; and by obtaining recognition and bargaining collectively with the employers named in Conclusion of Law 1 as either the joint or exclusive collective-bargaining representatives when it did not represent an uncoerced majority of the employees in said appropriate bargaining units and when the employees were lawfully represented by another labor organization as their exclusive bargaining representative, Respondent Truck Drivers Local 707 NPWU violated Section 8(b)(1)(A) of the Act.

13. The acts and conduct set forth in Conclusions of Law 11 and 12 have a close, intimate, and adverse effect on the free flow of commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent Employers and Respondent Truck Drivers Local 707 NPWU have engaged in certain unfair labor practices, I will recommend to the Board that they be required to cease and desist therefrom and to take certain affirmative actions designed to effectuate the purposes and policies of the Act. I will require each Employer Respondent to recognize and bargain collectively with Local 703 IBT as the exclusive collective-bargaining representative of their employees in the bargaining units found appropriate herein, to give full force and effect to the terms and conditions of all outstanding contracts covering those units, to cease and desist from checking off union dues and fees and remitting them to Respondent Truck Drivers Local 707 NPWU, and to withdraw and withhold recognition from Respondent Truck Drivers Local 707 NPWU as the exclusive collective-bargaining representative of any employees employed in the units found appropriate herein unless and until said labor organization has been certified as the result of a Board-conducted election. I will further recommend that Respondent Truck Drivers Local 707 NPWU be required to cease and desist from accepting recognition from any of the Respondent Employers as the exclusive bargaining representative of any of its employees in the units found appropriate in this case, that it cease and desist from bargaining collectively with any of the aforesaid employees on behalf of the employees in any of the units found appropriate in this case, and that, jointly and severally with said Respondent Employers, remit to Teamsters Local 703 any dues which have been checked off or should have been checked off and remitted to Local 703, and that it return to employees who executed checkoff authorizations in favor of Truck Drivers Local 707 NPWU but who have not executed checkoff authorizations in favor of Local 703 IBT any dues or other fees which have been checked off from their pay illegally. The obligation on the part of Truck Drivers Local 707 NPWU shall not exceed the aggregate sum of money which has been checked off and remitted to it by the Respondent Employers, plus interest. All moneys due and owing under this recommended Order shall be paid with interest thereon at the rate prescribed by the Tax Reform Act of 1986 for the overpayment and

underpayment of income taxes. *New Horizons for the Retarded*, 283 NLRB 1173 (1987). I will further recommend that each respondent be required to post the usual notice, informing its employees or its members, as the case may be, of their rights and of the results in the case, and I will recommend that signed copies of the notice to be posted by the Respondent Union be forwarded to each Respondent Employer for posting on their premises.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³⁰

ORDER

A. Respondents Dominick's Finer Foods, Inc., Donna's Distribution, Certified Grocers Midwest, Inc., and Mavo Leasing, all of Chicago, Illinois, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and to bargain collectively in good faith with Local 703 IBT as the exclusive collective-bargaining representative of all the employees employed in each of the respective bargaining units for which they respectively recognized Local 703 IBT for collective-bargaining purposes on September 1, 1990.

(b) Refusing to give full force and effect to any collective-bargaining agreements they had respectively with Local 703 IBT, as of September 1, 1990, including the union-security and checkoff provisions of said agreements.

(c) Granting recognition to any labor organization other than Local 703 IBT as either the joint or exclusive bargaining representative of any employees in the respective bargaining unit represented by Local 703 IBT as of September 1, 1990, unless and until said other labor organization becomes certified as the result of a Board-conducted election.

(d) Checking off from the pay of its employees and remitting to Truck Drivers Local 707 NPWU any money for union dues or fees.

(e) Discouraging membership in or activities on behalf of Local 703 IBT by refusing to bargain collectively with it as the duly designated collective-bargaining representative of employees employed in units for which it recognized Local 703 IBT on September 1, 1990, by refusing to give full force and effect to any collective-bargaining agreements they had with said union, including the union-security and checkoff provisions of said contract, by granting recognition to another labor organization as the bargaining representative of employees in bargaining units represented by Local 703 IBT, by checking off from the pay of employees and remitting to another labor organization money for union dues and fees, or otherwise discriminating against them in their hire or tenure.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and bargain collectively in good faith with Local 703 IBT as the exclusive collective-bargaining rep-

resentative of all the employees employed in each of the respective bargaining unit in which they recognized Local 703 IBT for collective-bargaining purposes on September 1, 1990.

(b) Give full force and effect to any collective-bargaining agreements they had respectively with Local 703 IBT, as of September 1, 1990, including the union-security and checkoff provisions of said agreements.

(c) Withdraw and withhold recognition from any labor organization other than Local 703 IBT as either the joint or exclusive bargaining representative of any employees in any bargaining unit represented by Local 703 IBT as of September 1, 1990, unless and until said other labor organization becomes certified as the result of a Board-conducted election.

(d) Jointly and severally with Truck Drivers Local 707 NPWU make whole Local 703 IBT for any union dues and fees which were checked off in their respective bargaining units from the pay of employees and remitted to Respondent Truck Drivers Local 707 NPWU for those employees for whom it held checkoff authorizations in favor of Local 703 IBT; and jointly and severally with Truck Drivers Local 707 NPWU make whole any employees for any union dues and fees which were checked off in their respective bargaining units and remitted to Respondent Truck Drivers Local 707 NPWU for those employees who had not executed checkoff authorizations in favor of Local 703 IBT, all of said payments to be made with interest.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at their respective places of business in and about Chicago, Illinois, copies of the attached notice marked "Appendix A."³¹ Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Post at their respective places of business in and about Chicago, Illinois, signed copies of the notice which is marked "Appendix B" under the same terms and circumstances which have been set forth above in section A,2(f) for the Respondent's own notice.

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

B. The Respondent Truck Drivers, Chauffeurs, Warehousemen and Helpers Union, Local 707, affiliated with National Production Workers Union, Chicago, Illinois, or Produce, Fresh & Frozen Fruits & Vegetables, Fish, Butter, Eggs, Cheese, Poultry, Florists, Nursery, Landscape & Allied Employees, Drivers, Chauffeurs, Warehousemen and Helpers

³⁰ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

³¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Union, Local 703, as a Division of Truck Drivers, Chauffeurs, Warehousemen and Helpers Union Local 707, affiliated with the National Production Workers Union, Chicago, Illinois, their officers, agents, and representatives, shall

1. Cease and desist from

(a) Entering into or enforcing a collective-bargaining agreement with Dominick's Finer Foods, Inc., Donna's Distribution, Certified Grocers Midwest, Inc., Mavo Leasing, or any of them covering employees in bargaining units represented, as of September 1, 1990, by Local 703 IBT, or enforcing union-security provisions in said agreements requiring membership in the Respondent Truck Drivers Local 707 NPWA as a condition of employment after 30 days of employment.

(b) Obtaining recognition and bargaining collectively with the employers named in section B,1(a) of this Order, or any of them, as either the joint or exclusive collective-bargaining representative of employees in any bargaining units represented as of September 1, 1990, by Local 703 IBT or in any other unit when it did not represent an uncoerced majority of the employees in the appropriate bargaining units and when said employees were lawfully represented by another labor organization.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Jointly and severally with the employers named above in section B,1(a) of this Order in their respective bargaining units, make whole Local 703 IBT for any union dues and fees which were checked off from the pay of employees and remitted Respondent Truck Drivers Local 707 NPWU for employees who had executed checkoff authorizations in favor of Local 703 IBT; and jointly and severally with the aforesaid employers in their respective bargaining units make whole any employees for any union dues and fees which were checked off and remitted to the Respondent Union for employees who had not executed checkoff authorizations in favor of Local 703 IBT, all of the payments to be made with interest.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its office copies of the attached notice marked "Appendix B."³² Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. Signed copies of the notice shall be returned to the Regional Director for forwarding to Respondent Employers for posting on their premises.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER RECOMMENDED that insofar as the consolidated complaint alleges matters which have not been found herein to be unfair labor practices, the consolidated complaint is dismissed.

APPENDIX A

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to recognize and to bargain collectively with Local 703 IBT as the exclusive collective-bargaining representative of all the employees employed in the bargaining unit in which we recognized Local 703 IBT as of September 1, 1990.

WE WILL NOT refuse to give full force and effect to any collective-bargaining agreement we had with Local 703 IBT as of September 1, 1990.

WE WILL NOT grant recognition to any labor organization other than Local 703 IBT as either the joint or exclusive collective-bargaining representative of any employees in any bargaining unit represented by Local 703 IBT as of September 1, 1990, unless and until said other labor organization becomes certified as the result of a Board-conducted election.

WE WILL NOT check off from the pay of any employees and remit to Truck Drivers Local 707 NPWU any money for union dues or fees.

WE WILL NOT discourage membership in or activities on behalf of Local 703 IBT by refusing to recognize and bargain collectively with it, by refusing to give full force and effect to any collective-bargaining agreement we have signed with said union, including the union-security and checkoff provisions of said contracts, by granting recognition to another labor organization as the bargaining representative of employees in a bargaining unit lawfully represented by Local 703 IBT, by checking off from the pay of employees and remitting to another labor organization money for union dues and fees, or otherwise discriminating against employees in their hire or tenure.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed to them by Section 7 of the Act.

WE WILL recognize and bargain collectively in good faith with Local 703 IBT as the exclusive collective-bargaining representative of all of the employees employed in the bargaining unit in which they were recognized for collective-bargaining purposes on September 1, 1990, and WE WILL give full force and effect to any collective-bargaining agreement we had with Local 703 IBT as of September 1, 1990, including the union-security and checkoff provisions of said agreement.

WE WILL withdraw and withhold recognition from any labor organization other than Local 703 IBT as either the joint or exclusive bargaining representative of any employees

³² See fn. 31, supra.

in any bargaining unit represented by Local 703 IBT as of September 1, 1990, unless and until said other labor organization becomes certified as the result of a Board-conducted election.

WE WILL, jointly and severally with Truck Drivers Local 707 NPWU, make whole Local 703 IBT for any union dues and fees which were checked off from the pay of our employees and remitted to Truck Drivers Local 707 NPWU for those employees from which we held checkoff authorizations in favor of Local 703 IBT, and jointly and severally with Truck Drivers Local 707 NPWU, WE WILL make whole any employees for any union dues and fees which we checked off and remitted to Truck Drivers Local 707 NPWU for those employees who had not executed checkoff authorizations in favor of Local 703 IBT, all of the payments to be made with interest.

DOMINICK'S FINER FOODS, INC., DONNA'S
DISTRIBUTION, CERTIFIED GROCERS MIDWEST,
INC., AND MAVO LEASING

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT enter into or enforce a collective-bargaining agreement with Dominick's Finer Foods, Inc., Donna's Distribution, Certified Grocers Midwest, Inc., Mavo Leasing, or any of them, covering bargaining units represented, as of September 1, 1990, by Local 703 IBT, or enforce union-security provisions in said agreements requiring membership in this Union as a condition of employment after 30 days of employment.

WE WILL NOT obtain recognition or bargain collectively with the above-named employers, or any of them as either the joint or exclusive collective-bargaining representative of employees in any bargaining units represented as of September 1, 1990, by Local 703 IBT or in any other unit when we do not represent an uncoerced majority of the employees in said units and when the employees in said units are lawfully represented by another labor organization.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL jointly and severally with the above-named employees make whole Local 703 IBT for any union dues and fees which were checked off from the pay of employees and remitted to us for employees who had executed checkoff authorizations in favor of Local 703 IBT and WE WILL jointly and severally with the above-named employers make whole any employees for any union dues and fees which were checked off and remitted to us for employees who have not executed checkoff authorization in favor of Local 703 IBT, all of said payments to be made with interest.

TRUCK DRIVERS LOCAL 707 NPWU